

**MEMORANDUM OF AGREEMENT BETWEEN
UNITED STATES COAST GUARD AND THE MAKAH INDIAN TRIBE
REGARDING INTEROPERABILITY AND COORDINATION**

1. PARTIES. The parties to this Memorandum of Agreement (MOA) are the United States Coast Guard Thirteenth District (Coast Guard) and the Makah Tribal Council of the Makah Indian Tribe, a federally recognized Indian Tribe located in Neah Bay, Washington.

2. AUTHORITY. This Agreement is authorized by Executive Order 13175. It is in accordance with the Department of Homeland Security Tribal Consultation policy, the Thirteenth Coast Guard District Instruction on Tribal Consultation and Coordination, and the Makah Tribal Council participation on the Region 10 Regional Response Team. Further, it is in accordance with the demonstration project described in Section 706.C.5 of the U.S. Coast Guard Authorization Act of 2010.

3. REFERENCE. The U.S. vs. Washington decision, No.9213, found at 384 F.Supp312, and the Federal Government's Trust obligations, as negotiated in the 1855 Treaty of Neah Bay, are critical documents that serve as the foundation of the trust responsibility that the Federal Government has with the Makah Indian Tribe.

4. PURPOSE. The purpose of this MOA is to set forth terms by which the Coast Guard and the Makah Tribal Council will coordinate and collaborate in the fulfillment of our mutual trust responsibility. The focus of this MOA is to enhance consultation, improve the leveraging of resources within our respective authorities as applicable, and to improve our collective all-hazards prevention and response posture within the marine environment that comprises the Makah Treaty Area.

5. RESPONSIBILITIES.

A. **Frequency** – Both parties will meet twice per year to update, validate and prioritize a consolidated work list that frames the specific cooperative efforts. This list will be prioritized to the three issues to be worked between meetings; the current version of Appendix A is an initial collection of potential work list items. In addition, at one of the semi-annual meetings, the principals from each party will meet to discuss overarching items of mutual interest and ensure priorities are in keeping with the strategic vision of each party.

B. **Attendees** – To ensure appropriate representation, the following Coast Guard and Makah Tribal Council offices will attend the working level meetings as appropriate:

Coast Guard:

Coast Guard District Thirteen – Incident Management and Preparedness Advisor.

Coast Guard District Thirteen – District Response Advisory Team Supervisor.

Coast Guard District Thirteen – Tribal Liaison.

Coast Guard Sector Puget Sound – Incident Management.

Coast Guard Sector Puget Sound – Fishing Vessel (F/V) Safety coordinator.

Coast Guard Sector Puget Sound – Waterways Management.

Makah Tribe:

Makah Tribal Council member.

Makah Tribal Council staff as appropriate.

Manager of the Makah Office of Marine Affairs.

- C. **Communication** – Both parties agree to enhance situational awareness via improved communications and coordination to include establishing communication protocols, and providing technical assistance. These initial communication protocols are established in Appendix B.
- D. **Prevention** – Both parties will work to promote robust derelict vessel, fishing vessel safety, and waterway analysis programs.
- E. **Preparedness** – Both parties will work to identify challenges and safety requirements that Makah vessels face when responding to pollution incidents.

The Makah Tribal Council will designate personnel to fill key positions within the National Contingency Plan (NCP) and agree to work towards Type III certification, at a minimum, in the following positions: Unified Commander & alternate(s), Operations Section Chief, Liaison Officers, Environmental Unit participants, and field observers. The Coast Guard will, as allowed by law, provide required position specific training as available and the Makah Tribal Council will maintain and track the qualification of those personnel and positions. In addition, the Makah Tribal Council will work as a Regional Response Team (RRT) member to resolve any issues regionally while reserving the right to engage the National Response Team (or other National authorities) as appropriate.

- F. **Response** – Both parties agree to work together to develop, establish, and maintain a process for training Tribal incident management and response capability within the Makah Treaty Area.

6. POINTS OF CONTACT.

- A. Makah Office of Marine Affairs – (360) 645-3015 (desk 8-5); (360) 640-0295 (cell)
- B. Coast Guard District Thirteen Tribal Liaison – (206) 220-7235; (206) 459-4590 (cell)
- C. Coast Guard Sector Puget Sound Incident Management Chief – (206) 217-6214

7. EFFECTIVE DATE. The terms of this agreement will become effective on the signing of both parties.

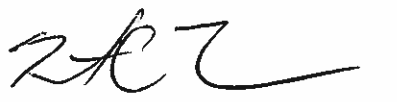
8. MODIFICATION. This agreement may be modified upon the mutual written consent of the parties.

9. TERMINATION. The terms of this agreement, as modified with the consent of both parties, will remain in effect for a term of 5 years from the effective date. Either party upon 60 days written notice to the other party may terminate this agreement. After notification of impending expiration, the agreement may be extended by mutual written agreement of the parties.

10. SEVERABILITY. Nothing in this agreement is intended to conflict with current laws or regulations, or the directives of the Department of Homeland Security, the Coast Guard or the Makah Tribal Council. If a term of this agreement is inconsistent with such authority, then that term shall be invalid and the remaining terms and conditions of this agreement shall remain in full force and effect.

11. ANTI-DEFICIENCY ACT PROVISION. Nothing in this Agreement shall constitute an obligation of funds of the United States in advance of appropriation of those funds.

APPROVED BY:



Rear Admiral Keith Taylor
Commander, Thirteenth Coast Guard District
April 12, 2013



The Honorable Timothy J. Greene, Sr.
Chairman, Makah Tribal Council
April 12, 2013

APPENDIX A

This is the work list that will be consolidated and prioritized in accordance with the Makah Tribal Council and the Coast Guard Thirteenth District MOA to advance the U.S. Coast Guard and the Makah Tribal Council's mutual trust responsibilities. Items in each section will be listed in priority order as agreed to by all parties twice yearly with the top three identified with an "*" being the focus of effort for the period between meetings. This appendix is designed to be a "living" document that will be updated regularly.

A. Prevention

- The Coast Guard will assist in identifying the safety requirements for Makah vessels interested in participating in pollution response activities.
- The Coast Guard will work with Makah Tribal Council on waterway management issues in the Makah Treaty Area (e.g., WAMS analysis and Vessel Traffic Risk Assessment (VTRA)).
- Both parties will promote robust derelict vessel identification and removal, and a coordinated fishing vessel safety program.
- The Makah Tribal Council will require all authorized tribal fishing vessels to complete a commercial fishing vessel dockside safety exam.

B. Preparedness

- Both parties will discuss the development and implementation of change to the Higher Volume Port Area. The parties will co-host additional meetings with invited regulatory agencies and guests, and develop work groups as needed.
- Both parties will work collaboratively to address other Coast Guard regulations that might impact the Makah Treaty Area (e.g., "Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil" and "Nontank Vessel Response Plans and Other Vessel Response Plan Requirements").
- Both parties will facilitate and encourage training and exercises for Incident Command System (ICS) position specific opportunities, and ensure that observer opportunities are identified for those personnel not trained for specific positions but would require additional ICS familiarity through invitations to observe and/or participate in drills conducted in the region.
- Both parties will identify further opportunities for Tribal personnel to work and train more closely with the Coast Guard in all-hazards response as appropriate (e.g., HAZWOPER, ICS, Early Assessment, spill drills/exercises).
- Both parties will determine the logistical capacity required to accommodate personnel and equipment for a Type III incident response in Neah Bay (50-100

people) to supplement existing capacity at Coast Guard Station Neah Bay (e.g., housing, berthing, messing and command post facility).

- Both parties will continue to work together under the Northwest Area Committee (NWAC) and Regional Response Team to develop and enhance response decision-making tools (e.g., dispersant use matrix).

C. Response:

- Both parties will work towards the development and improvement of Tribal all-hazards response capacity within the Makah Treaty Area.
- Both parties will develop a call out list of Tribal entities for incident response operations occurring in the Makah Treaty Area.
- For incidents that occur on or adjacent to the Makah Treaty Area, the Makah Tribal Council will identify their personnel that will fill the Unified Command Positions and/or other spill management positions, in accordance with the National Contingency Plan and the Northwest Area Contingency Plan.
- The Coast Guard will update Coast Guard District Thirteen Command Center quick response cards to ensure timely tribal notification via 24/7 contact numbers.

Joint Harbor Operations Center – (206) 217-6001
Makah Tribal Council Public Safety Office (24/7) - (360) 645-2701
Coast Guard District Thirteen Command Center – (206) 220-7001
Coast Guard Station Neah Bay Duty Officer – (360) 645-2237

D. Technical Assistance Opportunities:

- Both parties will work jointly to identify areas to implement Coast Guard Authorization Act 2010 and 2012 measures for oil spill prevention, preparedness and response within the Makah Treaty Area.
- Both parties will consult, early and often, during regulatory development and implementation on matters that have potential tribal implications.
- Both parties will consult on and consider alternative compliance measures where appropriate and allowed by law.
- Both parties will enhance situational awareness through identification of available tools and data, including Automatic Identification System and vessel traffic risk assessment.

Appendix B

Communication Protocols:

1. Consultation triggers – The Thirteenth Coast Guard District Instruction on Tribal Consultation and Coordination describes the process and procedures to engage Tribal governments when a regional Coast Guard action might affect or impact tribal interests. In addition, Executive Order 13175 and Department of Homeland Security policy affirm the right of any tribal government to request government to government consultation when they feel it appropriate for historic, planned and unanticipated activities that might impact tribal interests.

2. USCG/Makah engagement matrix:

USCG Level	PREVENTION	PREPAREDNESS	RESPONSE	POST-RESPONSE
Sector Puget Sound/Station Neah Bay	Specific prevention activities that affect Makah areas and interests	NW Area Committee Engagement; NW Area Contingency Plan (IMD)	Initial Notifications; Invitation to join Unified Command/General Staff;	Documentation and Implementation of Lessons Learned; MTS recovery coordination
CG D13 (including RRT10)	D13 (dp/dx) issues as appropriate	NW Area Committee Engagement; NW Area Contingency Plan through the RRT (D13 dx/dxmm)	RRT Decisions; Overall Coordination; DRAT issues	Documentation and Implementation of Lessons Learned

Note: The Makah Tribal Council should request from Coast Guard District Thirteen updates on Coast Guard policy initiatives. Coast Guard District Thirteen will facilitate direct interactions between the Makah Tribal Council and Coast Guard Headquarters on issues that are beyond the scope and authority of Coast Guard District Thirteen and this MOA.